

Exhibit 1

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF PUERTO RICO
4 Case No. 17-BK-3283-LTS

-----x

4 In re:
5 THE FINANCIAL OVERSIGHT AND MANAGEMENT
6 BOARD FOR PUERTO RICO,

7 as representative of

8 THE COMMONWEALTH OF PUERTO RICO, et al.,

Debtors.

9 -----x

Case No. 17-BK-4780-LTS

10 -----x

In re:

11 THE FINANCIAL OVERSIGHT AND MANAGEMENT
12 BOARD FOR PUERTO RICO,
13 as representative of
14 THE PUERTO RICO ELECTRIC POWER AUTHORITY,
15 Debtor.

-----x

16 May 16, 2023

9:31 a.m.

17
18 VIDEOTAPED DEPOSITION of DAVID
19 BROWNSTEIN, held at the offices of Kramer
20 Levin Naftalis & Frankel LLP, located at 1177
21 Avenue of the Americas, New York, New York
22 10036, before Anthony Giarro, a Registered
23 Professional Reporter, a Certified Realtime
24 Reporter and a Notary Public of the State of
25 New York.

1 DAVID BROWNSTEIN

2 you --

3 Q Let me try it a different
4 way. I don't want you to answer a
5 question you don't understand.

6 What information, if any,
7 did you provide to board members
8 concerning proposals to the fuel line
9 lenders?

10 A All proposals to and from
11 the fuel line lenders were reviewed and
12 approved by the board.

13 Q How many rounds of
14 back-and-forth proposals and
15 counterproposals were there?

16 MR. MERVIS: I think I have
17 to instruct the witness not to answer
18 that question on the basis of
19 mediation confidentiality.

20 Q You plan to testify at the
21 confirmation hearing, do you not, that
22 the fuel line lenders' settlement is
23 reasonable; correct?

24 A Yes.

25 Q So I'm just trying to get at

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2 puts the mediators into the mix,
3 which is not, I don't think -- we
4 won't do that. And you asked the
5 question about how many proposals
6 went back and forth. And I think
7 that that process is -- that process
8 does get into mediation privilege. I
9 realize that some of these are
10 judgment calls. And people can
11 disagree. But that's where I'm
12 landing.

13 MR. MADDEN: Maybe to cut to
14 the chase, if I were to ask
15 additional questions about the
16 process as between the oversight
17 board and the fuel line lenders and
18 mediation that led to the agreement
19 to the fuel line lenders' PSA, is it
20 fair to say you'll instruct the
21 witness not to answer those process
22 questions?

23 MR. MERVIS: Probably. But
24 I can think, for example, of a -- and
25 I don't mean to play -- so, for

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2 example, you know, who was this
3 negotiation counterpart, I think
4 that's fair. But there's a place.
5 There's a line; right? It's not
6 necessarily a bright line. One
7 bright line, I will say, in terms of
8 what went back and forth, yeah, that,
9 I'm going to instruct not to answer.

10 Q You've already told me who
11 your counterparts are. So I'll move on.

12 Mr. Brownstein, what
13 benefits, if any, does the fuel line
14 lenders' PSA provide to PREPA?

15 MR. MERVIS: Just note my
16 objection to the form. But you can
17 answer.

18 A As I said previously,
19 without that, without knowing what amount
20 we were going to be paying them and
21 whether, in fact, they were -- which
22 means whether they were entitled to
23 priority, we wouldn't have been able to
24 make an offer to the bondholders that
25 took the wallet we have available and put

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2 Q And what was the nature of
3 your involvement in that process?

4 A I worked with the board and
5 Proskauer to negotiate the agreement we
6 have with National and the document that
7 we executed with them.

8 Q And with whom did you
9 principally interact on the National
10 side?

11 A I guess I would have to say
12 Trish would have been my primary contact.

13 Q And what's Trish's full
14 name, if you know? If you don't recall
15 right now, that's okay.

16 A She just retired. So I'm
17 trying to forget her. I didn't really
18 mean that second part. But I can't tell
19 you why -- hold on.

20 Q We'll come back to it.

21 A No, no, no. I have to find
22 it, or I'll kill myself. Ferrari.

23 Q When did negotiations toward
24 the National PSA began?

25 A During mediation.

1 DAVID BROWNSTEIN

2 Q Early in mediation, middle
3 in mediation, toward the end?

4 A Early to in the middle.

5 Q Sorry?

6 A Early to in the middle is
7 the best I can do for you.

8 Q And was the mediation team
9 involved in those negotiations?

10 MR. MERVIS: That one, I'm
11 going to instruct the witness not to
12 answer that question.

13 Q Did you discuss the
14 National -- do you need a break?

15 A No. Sorry.

16 Q Did you discuss the National
17 negotiations directly with oversight
18 board members?

19 A Yes.

20 Q Did you update the oversight
21 board members on proposals to and from
22 National?

23 A I think I said this before.
24 But just to be clear, no proposal was
25 made to National without board approval.

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2 at the 71.65 percent exchange ratio that
3 the oversight board offered and agreed to
4 with National?

5 MR. MERVIS: Hold on. I
6 object to the form. You can answer.

7 A Well, I unfortunately can't
8 answer because my responses are mediation
9 privileged.

10 Q You can't answer without
11 revealing mediation privilege why the
12 oversight board in its plan of adjustment
13 did not offer to all PREPA bondholders
14 the same exchange ratio that it offered
15 and agreed to with National?

16 A Correct.

17 Q What is the basis on which
18 the settlement with National is in your
19 view reasonable when all PREPA
20 bondholders were being offered a
21 50 percent exchange ratio under the plan
22 of adjustment?

23 MR. MERVIS: I object to the
24 form. But answer if you're able to.

25 A I'm unable to answer that

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2 question as well.

3 Q The oversight board has
4 disclosed that one of the subjects of
5 your testimony at the confirmation
6 hearing will be that the settlement the
7 oversight board achieved with National is
8 fair and reasonable; correct?

9 A Correct.

10 Q What is the basis on which
11 you plan to testify that the National
12 settlement is fair and reasonable when
13 all PREPA bondholders were offered only a
14 50 percent exchange ratio under the plan
15 of adjustment?

16 MS. SPILLANE: Objection to
17 form.

18 MR. MERVIS: Object to the
19 form of the question.

20 You want to hear it back?

21 THE WITNESS: No. I
22 understand his question.

23 A I just don't know how to not
24 say it's mediation privilege. So I can
25 walk it through with you.

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2 Q And I want to put aside for
3 the moment, the treatment of the settled
4 reimbursement claim that National has
5 under the PSA.

6 A Okay.

7 Q Just focusing on the
8 treatment under the PSA of National's
9 bond claim, were the two terms you just
10 described different than the ones that
11 were offered to all PREPA bondholders
12 under the plan of adjustment?

13 MR. MERVIS: You mean the --
14 well, okay. Objection to the form.
15 You mean the 50-cent?

16 Q You just described a number
17 of things National agreed to, an exchange
18 ratio.

19 A Yeah. I hear you.

20 Q The treatment of the CVI and
21 some other things.

22 Was that package of terms
23 the one that was offered to all PREPA
24 bondholders under the plan of adjustment?

25 MR. MERVIS: That's a

1 DAVID BROWNSTEIN

2 different question. That one, I
3 object to the form.

4 A I'm not in a position to
5 answer that.

6 Q You don't know whether
7 that's the offer of settlement that was
8 made pursuant to the plan of adjustment?

9 A No. I am not prepared to
10 answer that, given mediation.

11 MR. MERVIS: I agree with
12 it, at least the way it's phrased.

13 MR. MADDEN: Maybe I'm
14 misspeaking. I don't think my
15 question comes anywhere close to
16 mediation privilege.

17 Q My question is just whether
18 the package of terms that you agreed to
19 with National on its bond claim, is that
20 the same or different from the offer of
21 settlement that was made to all PREPA
22 bondholders under the terms of the plan
23 of adjustment?

24 A Right. And what I'm saying
25 to you is, in my view, that answer to

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2 that question incorporates things that
3 are mediation privilege. So I can't
4 answer.

5 Q I don't know how that could
6 be. But we'll move on.

7 A Okay. You should talk to
8 your attorneys who have been involved in
9 mediation and ask them to explain why I
10 would be uncomfortable with it.

11 Q I want to limit my question
12 to the terms of the National PSA.

13 A I understand what you're
14 asking.

15 Q Same answer?

16 A Same answer.

17 Q Under the terms of the
18 initial plan of adjustment that was
19 proposed the same day that the board
20 announced a settlement in principal with
21 National, you know the plan I'm talking
22 about in December?

23 A Yes.

24 Q Under the terms of that
25 December plan, could National have

1 DAVID BROWNSTEIN

2 Brattle would have a view on?

3 A Correct.

4 Q Shifting topics, you refused
5 to answer questions of Mr. Madden about
6 the National settlement on the basis of
7 mediation privilege. Do you remember
8 that?

9 MR. MERVIS: Objection.

10 A Yes.

11 Q Mr. Brownstein, you don't
12 believe proposals that are made in
13 mediation are relevant to any issue in
14 the plan; correct?

15 MR. MERVIS: Objection to
16 the form.

17 MS. SPILLANE: Objection to
18 the form.

19 A Can you ask that question
20 again?

21 Q Yes.

22 Do you think that proposals
23 that are made in mediation are relevant
24 to any issues concerning whether this
25 plan should be confirmed?

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2 MR. MERVIS: Same objection.

3 A I think that the challenge
4 we have is that in order to properly
5 answer those questions, I would need to
6 be able to describe what happened in
7 mediation. And I don't know how to split
8 the two. I wish I could, so that we
9 could come up with an answer to your
10 question. I'm trying to avoid going out
11 of school on mediation which I really
12 need to be very cautious about.

13 So if your question is, do
14 you think the offers that were made in
15 mediation impact what happens outside of
16 mediation, is that your question to some
17 extent?

18 Q Let me try it a different
19 way.

20 Do you agree that the plan
21 should be confirmed or not based on its
22 own terms without regard to what happened
23 in mediation?

24 MR. MERVIS: Objection to
25 the form.

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2 A I'd say probably not. There
3 have been discussions between Proskauer
4 and the GUCs attorneys away from me.

5 Q Thank you.

6 Let me hand you Exhibit 36,
7 only in the event that you want to refer
8 to it. But I'm going to ask you
9 questions. You may elect not to look at
10 it.

11 In here, it says that Mr.
12 Brownstein -- and for the record, that is
13 the debtors' opening expert report and
14 disclosures.

15 And I'm looking at page 4,
16 the second full paragraph where it
17 says, "As to Topics Romanette IV and
18 V" -- and those topics are identified on
19 the previous page 3 at the top --
20 negotiation of the National PSA, fuel
21 line lender PSA, including the benefits
22 and the basis for the releases and
23 professional fees provided in connection.

24 It says, "Mr. Brownstein is
25 expected to testify to the extent

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2 consistent with mediation privilege."

3 I'd like to ask you, what
4 does that mean to you, consistent with
5 mediation privilege?

6 A So as I believe it is set up
7 is any negotiations with creditors, any
8 proposals made to them, any responses we
9 receive from them in the mediation
10 process remain privileged.

11 Q Thank you.

12 And the mediation process,
13 is that when you're all together with the
14 mediator, does it include between
15 mediation sessions? How do you define
16 mediation process?

17 A It's while mediation is
18 ongoing. So whether we're in a mediation
19 session or not is not germane to it.
20 We're in mediation. We engage with the
21 other parties in rooms together with the
22 mediators and separately as we move
23 forward.

24 Q So would that include
25 anytime before you actually get together

1 DAVID BROWNSTEIN

2 with the mediator for the first time?

3 MR. MERVIS: I object to the
4 form.

5 A No.

6 Q So would it be fair to say
7 that you believe the mediation process
8 would be from the first mediation until
9 either there is an impasse or a
10 settlement?

11 MR. MERVIS: Object to the
12 form.

13 A Correct.

14 Q And during that mediation
15 process, you believe that the privilege
16 applies as to negotiations, proposals,
17 counterproposals and other communications
18 between the mediating parties?

19 A Correct.

20 Q Now, you've invoked the
21 privilege several times this afternoon.

22 Do you currently intend to
23 waive any of those privileges when you're
24 called to testify at a confirmation
25 hearing?

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2 that made economic sense for them.

3 Q And that's a benefit to
4 PREPA?

5 A That's a benefit to our --
6 to the entire means to get out of
7 bankruptcy.

8 Q And these benefits, those
9 three benefits would also be benefits
10 for -- to PREPA from the National PSA?

11 A Yes. Sorry. I was talking
12 about both. No. National's case, not
13 with respect to the issue of getting to a
14 known recovery with them obviously.

15 Q Now, in the same paragraph,
16 it says, "Mr. Brownstein will base this
17 testimony on his personal participation
18 in the negotiation of the National PSA
19 and fuel line lender PSA."

20 My question is, was that
21 negotiation as to either one of those
22 PSAs outside of the mediation context?

23 A No.

24 Q So is it your belief that
25 your personal participation in the

1 DAVID BROWNSTEIN

2 negotiation of those two PSAs would also
3 be encompassed by the mediation
4 privilege?

5 MR. MERVIS: Object to the
6 form.

7 A Well, those agreements are
8 now in the public domain.

9 Q Correct.

10 A So it changes to some
11 extent, not in full, but what we could
12 talk about. I mean the dialogue we had
13 with National along the way is something
14 I'd be concerned about. The negotiations
15 of the agreement and the deliberations by
16 the board, I'd be concerned about. But
17 explaining what the agreement is, is no
18 longer mediation privileged. It's in the
19 public domain.

20 Q Why would you be concerned
21 about the dialogue with National?

22 MR. MERVIS: I object to the
23 form.

24 A Well, again, as I said, this
25 is something we're going to have to talk

1 DAVID BROWNSTEIN

2 with people about and get sign-offs on.
3 I'm not going to make my own decision as
4 to what we can and can't do without
5 talking to people who also are impacted
6 by it.

7 Q You also -- this disclosure
8 indicates Mr. Brownstein will base his
9 testimony on his personal participation
10 in or supervision of communications
11 between and among advisors to the
12 oversight board.

13 Are those communications all
14 encompassed by the mediation privilege in
15 your view?

16 MR. MERVIS: Objection to
17 the form.

18 A No.

19 Q Which advisors do you refer
20 to in that disclosure?

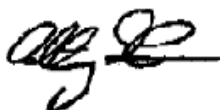
21 A Well, you'd be talking about
22 Ernst & Young, McKinsey and Brattle.
23 Those are the three other advisors to the
24 board.

25 Q We spoke earlier about the

C E R T I F I C A T I O N

I, ANTHONY GIARRO, a Shorthand Reporter
and a Notary Public, do hereby certify that
the foregoing witness, DAVID BROWNSTEIN, was
duly sworn on the date indicated, and that the
foregoing, to the best of my ability, is a
true and accurate transcription of my
stenographic notes.

I further certify that I am not employed
by nor related to any party to this action.



ANTHONY GIARRO